CHONG KAM SIONG

v.

HERMAN BIN BAHARUDDIN

HIGH COURT MALAYA, JOHOR BAHRU
TUAN JAMES FOONG CHENG YUEN J
[CIVIL SUIT NO. 22-118 OF 1989]
22 MARCH 1992

***TORT**: Road accident - Negligence - Defendant wholly liable - Dispute on damages - Quantum - Pain & suffering and loss of future earnings - Claim for medical expenses - Whether plaintiff entitled to medical treatment in a private hospital - Whether entitled to treatment in a Singapore hospital.*

This was a claim for damages as a result of injuries suffered by the plaintiff in a road accident on 25 December 1988 while he was riding his motorcycle no. JAV6366 from Johor Bahru in the direction of Kota Tinggi. At the 18th milestone, the plaintiff testified that a motorcar no. BBE5780 swerved into his path while overtaking him and collided into him. Upon considering the evidence of the plaintiff and documentary evidence the Court found the defendant solely liable for the accident. The defendant disputed the quantum of damages claimed by the plaintiff for pain and suffering and medical expenses incurred by the plaintiff in a Singapore hospital amounting to S$28,691.80 (RM43,073).

After the accident, the plaintiff was admitted unconscious to the Sultanah Aminah Hospital where he regained consciousness at about 2 to 3 p.m. on the same day. At about midnight, he discharged himself and was admitted to the National University Hospital in Singapore and was subsequently discharged on 4 February 1989. Counsel for the defendant argued that the plaintiff was not entitled to compensation for hospital expenses as claimed as he had acted unreasonably in discharging himself from a government hospital and not giving the medical personnel there a chance to treat him. The plaintiffs' Counsel argued that the excellent treatment the plaintiff obtained from the Singapore hospital had resulted in an expeditious recovery and thus a mitigation of the plaintiff's claim for damages. Furthermore, the medical report from the Sultanah Aminah Hospital indicated that the injury to the brachial plexus had been undetected which implied that the treatment from the Johor hospital was inadequate.

The issue was whether the plaintiff was entitled to medical treatment in a private hospital and if in the affirmative, whether he was entitled to treatment in a Singapore hospital.

Held:

[1] The injuries to the brachial plexus, fracture of the ulna and radius and fracture of the metacarpal and phalanges were very much related as it involved the right arm and hand of the plaintiff and the following was awarded for pain and suffering:

(a) brachial plexus - RM25,000

(b) fracture of the ulna and radius - RM15,000

(c) fracture of the metacarpal and phalanges - RM10,000

The Court also awarded RM30,000 for fracture of the left acetabular with central dislocation of the hip joint and as agreed by the parties, RM12,000 for fracture of the right femur bringing the total to RM92,000 and an agreed sum of RM27,030 for loss of future earnings.

[2] The yardstick to determine whether a claimant was entitled to medical expenses expended by him in a private hospital of his choice rather than seeking treatment from a government hospital where it is practically free, is not on whether the government hospital at that material time could or could not provide adequate care and attention to him. It is most unfair for this Court to determine which hospital is more efficient. In the Court's opinion any ordinary citizen of this country has a right to choose medical treatment for his injuries and illness from whoever and from wherever. The only limitations to this freedom are economic and availability factors. Accordingly, the plaintiff in this case is entitled to seek medical treatment other than in a government hospital.

[3] Because of the proximity and the linkage to Singapore, any person who suffers injuries as a result of a road accident in the State of Johor is not unreasonable in seeking medical treatment in Singapore. The hospitals in Singapore should be treated like any other private hospital in Malaysia and therefore if the patient has a choice to go to any other private hospital in Malaysia, similarly he should be entitled to seek treatment at a hospital in Singapore. Based on the aforesaid the plaintiff's claim for medical expenses amounting to RM43,037 is allowed.

[Defendant 100% liable. Plaintiff granted general damages of RM119,030 and special damages of RM59,608 with costs].

Cases referred to:
Tang Sia Bak v. Mooi Kim Ming & Anor. [1989] 1 BCD para 85 ***(refd)***
Harcharan Singh a/l Saudargar Singh v. Hassan b. Ariffin [1990] 2 CLJ 393 ***(refd)***
Tajuddin b. Sheikh Daud v. Wong Kim Yin [1989] 2 CLJ 237 ***(refd)***
Amamuthu a/l Suppiah v. Mohamad Abu b. Hussin (JB High Court Civil Suit No. 1109-85) ***(refd)***

For the plaintiff - N. Jegatheeson; M/s. John Ang & Jega
For the defendant - Anantha Kumar; M/s. Varughese, Kumar, Netto & Partners

JUDGMENT

James Foong Cheng Yuen J:

The plaintiff in this case suffered injuries as a result of a road accident that happened on 25 December 1988. On the said day the plaintiff was riding his motor cycle JAV6366 along Jalan Johor Bahru/Kota Tinggi from Johor Bahru in the direction of Kota Tinggi. At or near the 18 m.s. of the said road, an accident occurred between his motor cycle and a motor car number BBF5780 driven by the defendant.

At the trial of this case, the plaintiff testified that motor car BBF5780 while overtaking him swerved into his path and collided into him. A sketch plan drawn up by the traffic police personnel was also adduced by the plaintiff's Counsel.

The defendant was not present at the hearing and did not give evidence but his Counsel Mr. Kumar represented him.

After careful consideration of the evidence of the plaintiff including documentary evidence such as the sketch plan and relevant photographs, I find that the defendant is solely to be blamed for the said accident.

As for the quantum of damages, only 2 matters need to be decided by this Court as the rest were agreed upon by both parties. The 2 matters are as follows;

1. Pain and suffering (general damages)

2. Medical expenses incurred by the plaintiff in a hospital in Singapore (special damages)

I shall first deal with the quantum regarding pain and suffering (general damages).

The injuries of the plaintiff can be classified under 4 headings:

(1) *Brachial plexus*

The plaintiff suffered a lesion affecting C5 and C6 nerve root. There is considerable wasting of muscles of the deltoid, the biceps and the triceps of the left upper limb. Due to this wasting, the plaintiff's shoulder joint contour is distorted. There is also significant wasting of muscles of the left forearm. As the result of the aforesaid scars were left with diminished sensation to pin prick over C5 and C6 dermatones.

Mr. Jegatheeson Counsel for the plaintiff submitted to me that the plaintiff should be entitled to a sum of RM30,000 for pain and suffering under this category. Mr. Kumar on the other hand felt that this category of damages should be tied up to the second category injuries which I shall shortly state. For the combination of this and the second category of the injuries Mr. Kumar is of the opinion that the plaintiff is only entitled to RM55,000.

(2) Fracture of left radius and ulna, comminuted fracture of the 4th and 5th metacarpal, fracture of the proximal and middle phalanges of the 4th and 5th digits.

Most of these fractures were healed but resulted in certain amount of restriction in mobility.

Mr. Jegatheeson submitted a sum of RM25,000 for pain and suffering under this category.

I am of the opinion that injuries in category (1) and (2) are very much related as it involves the right arm and hand of the plaintiff. For this I award the following for pain and suffering:

(a) brachial plexus	-	RM25,000
(b) fracture of the ulna and radius	-	RM15,000
(c) fracture of metacarpal and phalanges	-	RM10,000

making it a total of RM50,000 under the aforesaid two categories.

(3) *Hip injury*

The plaintiff suffered from a fracture of the left acetabular with central dislocation of the hip joint. The result is that the plaintiff walks with a Trendelenburg gait with limitation of hip movement.

Mr. Jegatheeson submitted a sum of RM40,000 while Mr. Kumar argued that the plaintiff should only be entitled RM30,000.

After considering the awards by the Courts on this type of injuries, I find that the plaintiff is entitled to RM30,000 for this category of pain and suffering.

(4) *Fracture of right femur*

Both Counsel agreed to an award of RM12,000 for this category of injury.

From the aforesaid, I therefore award a total sum of RM92,000 for pain and suffering of the plaintiff coupled with the agreed sum of RM27,030 for loss of future earnings, the plaintiff shall be entitled to a sum of RM119,030 as general damages.

I shall now turn to the next disputed claim and this is for medical expenses incurred by the plaintiff for treating his aforesaid injuries amounting to a sum of Singapore $28,691.80. Converted to Malaysian Ringgit at the agreed rate by both Counsel, the amount is a staggering sum of RM43,073.

Before I proceed to consider the authorities and coming to my own decision, I would like to elaborate on the facts of the case regarding this point.

The accident occurred on 25 December 1988 at about 1 p.m. The plaintiff was first taken to Kota Tinggi District Hospital. When he regained consciousness at about 2 to 3 p.m. of 25 December 1988 he found himself in the hospital bed of the Sultanah Aminah Hospital, Johor Bahru. At about 12 midnight on 12 December 1988, with the assistance of his family members, he discharged himself and was admitted to the National University Hospital in Singapore. There he was immediately attended to by Dr. Satku, a senior lecturer in the Orthopaedic Surgery of the said hospital. By 4 February 1989 he was discharged to be followed up with outpatient treatment.

Mr. Kumar argued that the plaintiff has unreasonably discharged himself from a government hospital. He went on to stress that the plaintiff did not even give the personnel of Sultanah Aminah Hospital in Johor Bahru a chance to treat him because, on the very same day of the plaintiff's admission to the hospital, he requested for a discharge. The doctors at the Sultanah Aminah Hospital did attend to the plaintiff on 2 occassions that the plaintiff was conscious and X-rays of his body were also taken. For this Mr. Kumar submitted that the plaintiff should not be entitled for compensation of hospital expenses as claimed.

Mr. Jegatheeson advanced the theory that because of the excellent treatment the plaintiff obtained from Singapore, the plaintiff was able to recover expeditiously and thus reduced his claim for loss of earnings. The plaintiff had thus mitigated his claim for damages in this manner. Further, according to Mr. Jegatheeson, the medical report from the Sultanah Aminah Hospital dated 5 June 1989 and admitted as part of the agreed bundle of documents, has left out the detection of the injury to the brachial plexus. This, he implied shows the inadequacy of the Sultanah Aminah Hospital to provide adequate treatment to the plaintiff.

Various authorities on this point were forwarded for my consideration but I find them to be contradictory with no firm guiding principles.

In the case of *Tang Sia Bak v. Mooi Kim Ming & Anor.* [1989] 1 BCD para. 85, the editor's note at the bottom of this reported decision states as follows:

> Their Lordships held that it was unreasonable on the part of the 2nd respondent to discharge himself from the general hospital where he was first admitted to seek similar treatment at a private hospital.

In this case, according to this report, the Supreme Court reduced the High Court's award on the claim for medical expenses at a private hospital to 1/3 of the original sum.

The aforesaid Supreme Court decision was followed by Mr. Justice Malek in the case of *Harcharan Singh a/l Saudargar Singh v. Hassan b. Ariffin* [1990] 2 CLJ 393.

In the reported case of *Tajuddin b. Sheikh Daud v. Wong Kim Yin* [1989] 2 CLJ 237, Mr. Justice Peh however allowed the claim for expenses for treatment in a private hospital. His reason is because of "the grossly inadequate attention and more probably than not, inadequate treatment" granted to the plaintiff by the General Hospital in Ipoh that the treatment in a private hospital was justified. In this case, the medical officer of the General

Hospital there was called to testify as to the shortage of doctors and specialist to attend to the plaintiff. I was informed that the decision of this case was upheld by the Supreme Court on appeal.

In an unreported case of *Amamuthu a/l Suppiah v. Mohamad Abu b. Hussin* (JB High Court Civil Suit No. 1109-85), Mr. Justice L.C. Vohrah awarded a sum of S$27,811 as medical expenses incurred by the plaintiff for treatment in Singapore. An appeal against this decision was made by the defendant to the Supreme Court and the Supreme Court rejected the appeal on 1 March 1990.

The issue before this Court is therefore:

(a) whether the plaintiff is entitled to medical treatment in a private hospital; and

(b) if he is entitled, can he be treated in a hospital in Singapore?

Relating to the first question and after careful consideration of all the related decisions, I am of the view that the yardstick to determine whether a claimant is entitled to medical expenses expended by him in a private hospital of his choice rather than seeking treatment from a government hospital where it is practically free, is not on whether the government hospital at that material time could or could not provide adequate care and attention to him. To my mind it is most unfair for this Court to determine which hospital is more efficient. Certainly one cannot deny the fact that the Government hospitals are often crowded and overworked but they are providing a practically free service to every one in this country. I am sure that there are also private hospitals that are inefficient and do not provide adequate medical treatment. In my opinion any ordinary citizen of this country has a right to choose medical treatment for his injuries and illness from whoever and from wherever. The only limitations to this freedom are economic and availability factors. Economic in the sense that he may not be able to afford the medical expenses so charged by the medical fraternity in the private sector. Such being the case, many patients have turned to our government hospitals to seek medical treatment mainly because, they are heavily subsidised by the government to a stage where the charges are practically free. As for 'availability', it is a question of whether the particular type of treatment is available at certain medical establishment, be it private or government. Again it is a fact that not all private medical establishments can one find the particular specialist or the equipment to handle such cases, while in a larger general hospital such services are available.

Applying the aforesaid principle of the freedom of choice, an injured victim in a road accident should also be granted the same right to choose where and by whom he wishes to be treated. When such a patient seeks medical treatment at the material time, his immediate objective is to cure himself speedily. Next in his mind would be whether he can afford such treatment and the availability of medical specialists, equipment and treatment from the establishment he seeks to be admitted. I doubt at that material time, an injured patient in a motor accident would be thinking of the recovery of medical expenses as his first priority in making a decision as to where and by whom he would like to be treated, bearing in mind that again at that material time there is no certainty that he would succeed in his claim for recovery of such expenses. There is also a probability that he may not succeed subsequently in his claim for such expenses and, in such an event he would have to foot the medical bill by himself.

Many patients who do not possess economic means would certainly turn to the government hospitals while, those who can afford may seek medical treatment at a private hospital of a nature which is more in line with their station in life which they are accustomed to; this of course is based on the assumption that both private and government hospitals have the availability of specialists and equipment to treat his type of injuries.

For reasons aforesaid, I find that the plaintiff in this case is entitled to seek medical treatment other than in a government hospital.

Relating to the second question such circumstances is only unique and often occurs not in other parts of the country but is peculiar to the State of Johor, particularly the southern region. The proximity of Johor to Singapore geographically, economically, historically and culturally has created a mental impression on the people of this part of the country that medical treatment in Singapore is by far more superior than that available in the State of Johor. I am, in absence of any evidence, unable either to confirm or dispute this (the fact that medical treatment provided in Singapore is better than in Johor). However, because of this proximity, one cannot escape the fact that there are many patients from this part of the country seeking medical treatment in this neighbouring country. To my mind because of this proximity and the stated linkage to Singapore, any person who suffers injuries as a result of a road accident in the State of Johor is not unreasonable in seeking medical treatment in Singapore. The hospitals in Singapore should be treated like any other private hospitals in Malaysia and therefore if the patient has a choice to go to any other private hospitals in Malaysia, similarly he should be entitled to seek treatment at a hospital in Singapore.

Basing on the aforesaid, I therefore allow the plaintiff's claim for medical expenses amounting to Malaysian Ringgit RM43,037.

To sum up I allow, general damages of RM119,030 and special damages of RM59,608 which are made up as follows:

1. past loss of earnings	-	RM 7,140
2. costs of house help	-	RM 1,200
3. ambulance services	-	RM 435
4. costs of future surgery	-	RM 5,000
5. miscellaneous as claimed in item 6 & 7 of the statement of claim	-	RM 1,400
6. medical report	-	RM 92
7. police document	-	RM 20
8. damage to clothes	-	RM 60
9. damage to motor cycle	-	RM 1,200
10. costs of crutches	-	RM 24
11. medical expenses	-	RM 43,037
		RM 59,608

and costs to the plaintiff.